

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CODY HAMMAKER,)	
)	
Plaintiff,)	Civil Action No. 23-962
)	Magistrate Judge Maureen P. Kelly
v.)	
)	Re: ECF Nos. 20, 28 and 34
ALLEGHENY COUNTY JAIL MEDICAL)	
DEPARTMENT,)	
)	
Defendant.)	

MEMORANDUM ORDER

Plaintiff Cody Hammaker (“Plaintiff”) brings this *pro se* action against the Allegheny County Jail Medical Department (“Defendant”) arising out of allegations that he received insufficient medical care when he was detained at the Allegheny County Jail. ECF No. 6.

Defendant filed a Motion to Dismiss on October 23, 2023, without a supporting brief or certificate of service. ECF No. 20. The Court directed Plaintiff to file a response to the Motion to Dismiss by November 27, 2023. ECF No. 21.

Plaintiff did not respond to the Motion to Dismiss. The Court entered an Order to Show Cause, directing Plaintiff to show good cause by January 23, 2024, why Defendant’s Motion to Dismiss should not be granted based on his failure to respond thereto.¹ ECF No. 28. The Court also entered an Order directing Defendant to file a certificate of service for the Motion to Dismiss. ECF No. 32.

¹ To date, Plaintiff has not filed a response to the Order to Show Cause or Motion to Dismiss. On January 5, 2024, the Order to Show Cause that was mailed to Plaintiff was returned to the Court marked “RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD.” The Court mailed another copy of the Order to Show Cause to Plaintiff’s address of record on January 8, 2024.

On January 9, 2024, Defendant filed the instant Motion for Leave to File Brief in Support of Motion to Dismiss Out of Time (“Motion for Leave”), ECF No. 34, and certificate of service for its prior Motion to Dismiss, ECF No. 33. Defendant’s counsel explains that he inadvertently did not file the corresponding brief for his Motion to Dismiss. Counsel points to a service letter he sent to Plaintiff as purported proof that, despite not filing the brief, he nevertheless mailed a copy of it to Plaintiff on October 24, 2023. Id. ¶ 5. However, the service letter only refers to the Motion to Dismiss—not the brief. ECF No. 34-2 at 1.

Upon review, the pending Motion to Dismiss is not complete as filed, and proof of service is unclear. Given this, the Court denies the Motion to Dismiss without prejudice. Defendant may file a renewed Motion to Dismiss and supporting brief within 14 days. The Court will enter a response deadline for any renewed Motion to Dismiss. As a result, Plaintiff is not required to respond to the Order to Show Cause.

An appropriate Order follows.

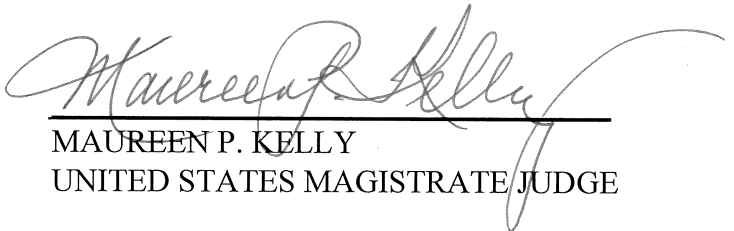
AND NOW, this 12th day of January, 2024, IT IS HEREBY ORDERED that Defendant’s Motion to Dismiss, ECF No. 20, is DENIED without prejudice. Defendant may file a renewed Motion to Dismiss and Brief in Support by January 26, 2024.

IT IS FURTHER ORDERED that the Order to Show Cause, ECF No. 28, is revoked in light of the Court’s Order denying the Motion to Dismiss. Plaintiff is not required to file a response to the Order to Show Cause as previously directed.

IT IS FURTHER ORDERED that Defendant’s Motion for Leave to File Brief in Support of Motion to Dismiss Out of Time, ECF No. 34, is GRANTED, to the extent that the Court will allow Defendant to file a renewed Motion to Dismiss with supporting brief, as detailed above.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72.C.2 of the Local Rules of Court, the parties are allowed fourteen (14) days from the date of this Order to file an appeal to the District Judge which includes the basis for objection to this Order. Any appeal is to be submitted to the Clerk of Court, United States District Court, 700 Grant Street, Room 3110, Pittsburgh, PA 15219. Failure to file a timely appeal will constitute a waiver of any appellate rights.

BY THE COURT:



MAUREEN P. KELLY
UNITED STATES MAGISTRATE JUDGE

cc: Cody Hammaker
5427 Castlestone Drive
Baltimore, MD 21237

All counsel of record via CM/ECF.